

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

REC'D  
**ORIGINAL**  
JUL 22 1996

In the Matter of: )

**Grandfathered Short-Spaced  
FM Stations** )

**MM Docket No. 96-120  
RM-7651**

To: The Commission - Mail Stop 1170

**DOCKET FILE COPY ORIGINAL**

**COMMENTS OF THE LIVINGSTON RADIO COMPANY**

**Introduction**

1. The Livingston Radio Company ("Livingston") submits these comments in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") in this proceeding.<sup>1/</sup> Livingston is the licensee of Station WHMI-FM, Howell, Michigan. WHMI-FM is not a pre-1964 grandfathered station but is a Class A station that has been prevented from increasing its effective radiated power to the normal 6 kW maximum for its class because of short-spacing to second- and third-adjacent channel Class B stations. This handicap prevents WHMI-FM from adequately serving parts of its home county, Livingston County, Michigan, within its 1 mV/m primary service contour, even though WHMI-FM is the only broadcast station of any kind licensed to the entire county. Livingston urges the Commission to eliminate second- and third-adjacent channel restrictions on facilities improvements by grandfathered short-spaced but not to limit relief to pre-1964 situations.

<sup>1/</sup> FCC 96-236, released June 14, 1996.

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## Background

2. WHMI-FM was constructed in 1977 and was fully spaced to all co-channel and adjacent-channel stations when it went on the air. However, when the Commission converted to the metric system of measurement in BC Docket No. 80-90, 94 FCC 2d 152 (1983), the accompanying revisions to the mileage separation requirements in Section 73.207 of the Rules for the first time made WHMI-FM short-spaced to second-adjacent channel station WLTI(FM), Detroit, and third-adjacent channel station WBHR(FM) (formerly WIBM), Jackson, Michigan. As a result, when the Commission permitted Class A stations to increase ERP to 6 kW in Docket 88-375 in 1989 4 FCC Rcd 6375, WHMI-FM was barred from taking advantage of the new rule.

3. Livingston applied for a power increase in 1989 (File No. BPH-891220IA) and again in 1992 (File No. BPH-920325IE), taking the position that a waiver was not needed to operate at 6 kW under Section 73.207 of the Rules. The Commission denied the applications in 1995, *Livingston Radio Co.*, 10 FCC Rcd 574, on the ground that the rule did not permit the power increase, and no waiver would be granted absent the consent of WLTI and WBHR.<sup>2/</sup> The Commission's decision was issued despite a showing by Livingston that the only new interference that WHMI-FM's power increase would cause would be to only 36 homes within the protected contour of WLTI; and all those homes were far from Detroit and in a small area very close to the WHMI-FM transmitter, where WLTI provides no programming service, and in an area to which WHMI-FM does provide local material in its

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<sup>2/</sup> WLTI had filed an informal objection, while WBHR had remained silent.

programming. Although Livingston took strong exception to the decision,<sup>3/</sup> it was forced by the economic circumstances of being only a small station to stop after six years of unsuccessful effort and expense.

**The Logic of the Commission's Proposals Applies  
As Much to Post-1964 Grandfathered Stations as to Pre-1964 Stations.**

4. All of the reasons given by the Commission for providing relief for pre-1964 grandfathered stations apply to stations like WHMI-FM as well. Like the pre-1964 stations, WHMI-FM was constructed in full conformance with the Commission's Rules at the time. WHMI-FM has never moved its transmitter site and so did not bring any problem down on its own shoulders. It needs relief from a constraint imposed by an after-the-fact rule change imposed on it as much as or more than older stations do

5. All of the technical reasons for ignoring second- and third-adjacent channel interference and not requiring the consent of affected stations apply as well to WHMI-FM as pre-1964 stations. Improvements in technology make it unlikely that facilities changes by second- or third-adjacent channel short-spaced stations will in actual practice cause any loss of service to anyone. If any interference occurs, it will be close to the transmitter site and will be in the nature of signal substitution rather than signal destruction. On the other hand,

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<sup>3/</sup> The Commission's ruling contained several mistakes of fact, including a statement that WBHR had not consented, when it in fact had, and statements that stations in Benton Harbor and Berrien Springs, Michigan, provided service to Howell, when they are in fact some 150 miles away from Howell, so it is impossible for their signals to come anywhere near Howell. The Commission also stated that WHMI-FM receives no interference from super-powered stations when it in fact receives interference from super-powered WBCT, Grand Rapids, Michigan. Moreover, it is not clear that any interference would be caused at all if WHMI-FM increased power, as more refined calculation methods now indicate interference to no homes.

the constraints imposed by the current rules are preventing stations from improving service to the public, with WHMI-FM as a prime example of a station that cannot serve its home county, where it is the only local station, because of an impact that would be either non-existent or *de minimis* in practice on a distant major-city station -- a station whose programming efforts cannot be expected to serve Livingston County the way WHMI-FM can as the county's own local station and which does not feel like consenting to something it will never notice in practice if the rule is changed.

**Restricting Relief to Pre-1964 Stations Will Hurt Small Businesses  
Contrary to Section 257 of the Telecommunications Act of 1996.**


6. It is Livingston's impression that most (although not all) of the pre-1964 grandfathered short-spaced stations are Class B stations in the crowded northeastern part of the country and southern California, where FM radio first became popular and many of the early stations were built. In contrast, many of the stations that have suffered as a result of events since 1964 are Class A stations, whose service has become increasingly important as the population of their communities has grown over the years. Section 257 of the Telecommunications Act of 1996 requires the Commission to pay special attention to small businesses; and in the spirit, if not the letter, of that section, the Commission should focus on the needs of Class A stations, which are much more likely than Class B and Class C stations to be owned and operated by small business entities. Thus the relief proposed by the Commission should be afforded to all grandfathered short-spaced stations, not just those built before 1964.

## Conclusion

7. There is a compelling need for relief for Class A stations serving small communities, and there is no logical reason for denying them relief based on their age, when the physics of radio propagation do not vary with the age of the station. Accordingly, Livingston urges the Commission to adopt the proposals set forth in the NPRM and to apply at least the second- and third-adjacent channel relief to all stations that could benefit from it.

Gregory P. Jablonski, President  
The Livingston Radio Company  
P. O. Box 935  
Howell, MI 48844  
Tel. 517-546-0860

Respectfully submitted,

  
Peter Tannenwald

  
Michelle A. McClure

Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Ave., N.W.,  
Suite 200  
Washington, D.C. 20036-3101  
Tel 202-728-0400  
Fax 202-728-0354

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